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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GRANT REYNOLDS and THE ESTATE OF DALE C. ECKERT CORPORATION, Plaintiffs, vs. PHILIP B. WAGNER and WILLIAM SIMON, Defendants.	CASE NO. SAVC-91-395 GLT (RWRX) JUDGMENT PURSUANT TO FEDERAL RULE 56 (Filed Aug. 30, 1993)

This action came on for hearing before the Court, on July 26, 1993, the Honorable Gary L. Taylor, on the Motion of Defendant Philip B. Wagner for Summary Judgment and the Motion of William Simon for Summary Judgment, and the evidence presented having been fully considered, the issues having been duly heard and a decision having been duly rendered as follows:

> "Evidence is present which could ordinarily raise a triable issue as to whether the lender was more than a lender, and the loan at issue was in actuality a joint venture. However this evidence

is foreclosed by the D'Oench Duhme doctrine, 12 U.S.C. 1823(e). *See Langley v. FDIC*, 484 U.S. 83 (1987), *see also FDIC v. Hamilton*, 939 F.2d 1225 (5th Cir. 1991). The Court may not draw inferences from the documents presented, and concludes that there is no evidence to raise a triable issue that ail of the necessary legal steps could reasonably have been completed successfully before 12 U.S.C. 1823(e) became applicable in this case."

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing, that the entire action be dismissed on the merits and that defendants Philip B. Wagner and William Simon recover their costs.

DATED: 8/30/, 1993

/s/ Gary S. Taylor
GARY S. TAYLOR
UNITED STATES
DISTRICT JUDGE

APPENDIX B

THE LAW OFFICE OF WILLIAM McKINNON
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Attorney for Plaintiffs Grant Reynolds
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GRANT REYNOLDS and THE ESTATE OF DALE C. ECKERT CORPORATION Plaintiffs, vs. PHILIP B. WAGNER and WILLIAM SIMON Defendants	No. SAVC91-395 GLT (RWRX) NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME FOR FILING NOTICE OF APPEAL [FRAP 4(a)(5)]

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

Please take notice that on November 1, 1993, at 10 a.m. or as soon thereafter as counsel can be heard, in Courtroom 2, United States Court House, 751 West Santa Ana Blvd., #101, Santa Ana, CA 92701-4599, the undersigned will bring the following Motion for an Extention of Time to file a Notice of Appeal on for hearing.

October 4, 1993

THE LAW OFFICE OF
WILLIAM McKINNON

/s/ William McKinnon
William McKinnon

THE LAW OFFICE OF WILLIAM McKINNON
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Attorney for Plaintiffs Grant Reynolds
and Estate of Dale C. Eckert Corporation

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GRANT REYNOLDS and THE ESTATE OF DALE C. ECKERT CORPORATION Plaintiffs, vs. PHILIP B. WAGNER and WILLIAM SIMON Defendants	No. SAVC91-395 GLT (RWRX) MOTION FOR EXTENSION OF TIME FOR FILING NOTICE OF APPEAL; DECLARATION IN SUPPORT. [FRAP 4(a)(5)]

Pursuant to Rule 4(a)(5) of the Federal Rules of Appellate Procedure, the Estate of Dale C. Eckert, the palintiff [*sic*] above named, moves the court for an order extending to November 1, 1993 the time [*sic*] filing of an notice of appeal by said plaintiff to the United States Court of Appeal for the Second Circuit from the judgment entered in this action on September 1, 1993.

This motion is made on the grounds of good cause based on the failure of counsel for the Estate of Dale C. Eckert Corporation to obtain timely instruction from all parties from whom instruction must be received in order

that counsel be properly authorized to act for said plaintiff. Moving party submits the Declaration of William McKinnon, special counsel to the Estate of Dale C. Eckert Corp. in support.

October 4, 1993

THE LAW OFFICE OF
WILLIAM McKINNON

/s/ William McKinnon
William McKinnon

DECLARATION OF WILLIAM McKINNON

I, **WILLIAM McKINNON**, declare as follows:

1. I am the attorney of record for plaintiff Estate of Dale C. Eckert, and as such have personal knowledge of the matters herein stated.

2. On August 26, 1993 I transmitted to counsel for the trustee of said Estate a copy of the Minute Order of this court together with a request for instructions on appeal.

3. Although both he and I have to make contract on several occasions, to this date we have been unable to schedule a meeting where in he and I could meet with the trustee and obtain his instruction regarding appeal.

4. In part pursuit [*sic*] of the rights on behalf of said Estate is the responsibility of Mr. Grant Reynolds, the other plaintiff herein. There exists the theoretical possibility that I could receive contradictory instruction from Mr. Reynolds and the trustee, and could therefore be compelled to seek instruction from the Bankruptcy Court prior to filing or abandoning the appeal.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge and if called upon as a witness could competently testify thereto.

Executed on the 4 th. day of October, 1993 at Los Gatos, California.

/s/ William McKinnon
William McKinnon